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VIA ELECTRONIC FILING

David Solomon
Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W. – Room 7-C723
Washington, DC, 20554

Re: Verizon Section 272 Compliance Biennial Audit Report in
CC Docket No. 96-150

Dear Mr. Solomon:

On behalf of AT&T Corp., I am requesting that the unredacted version of the Report of Independent Accountants on Applying Agreed-Upon Procedures, prepared by Ernst & Young LLP (the "Auditor") and filed on June 12, 2003 ("Verizon Second Section 272(d) Audit Report") be placed in the public file. It is clear from the Commission's *Verizon Section 272 Audit Disclosure Order*¹ ordering Verizon to place the unredacted version of its first Section 272 Biennial Audit in the public record and the *SBC Section 272 Audit Disclosure Order*² requiring SBC to do the same, that the unredacted version of the Verizon Second Section 272(d) Audit Report must be made

¹ *In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, Memorandum Opinion and Order, CC Docket No. 96-150 (rel. Jan. 10, 2002) ("*Verizon Section 272 Audit Disclosure Order*").

² *In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, Memorandum Opinion and Order, CC

available for “public inspection.” Masking from the public the very information needed to evaluate Verizon’s compliance with Section 272 undermines both the letter and spirit of the audit requirements imposed by Section 272(d).

The Verizon Second Section 272(d) Audit Report redacts critical data regarding Verizon’s performance. (*See*, Appendix A at 80-81 (Tables 31 and 32) and Attachment A (virtually all 79 pages)). Those redactions “hamper . . . [the] parties’ ability to evaluate the scope and seriousness of the facts in the audit report.”³ Indeed, as the Commission found in the Verizon and SBC Section 272 Audit proceedings, the public needs access to the redacted information to be able to comment meaningfully on Verizon’s § 272(d) Audit Report.

The public record does not include any request by Verizon that the Commission treat the redacted information as confidential. However, assuming such a request was made, it should not be granted because it is apparent from the face of the audit report that the redacted information is not entitled to confidential treatment under the Commission’s prior Orders. It is apparent that the redacted data are “at a summary, not detailed level” – such as total records or orders, order volumes, total number of trouble tickets –and are “dated” – the information reported is from January through December 2002.⁴ Thus, “release of Verizon’s audit information [is] compelled by both section 272(d) of the Act and consistent with the Commission’s confidentiality rules.”⁵

Docket No. 96-150 (rel. September 5, 2002) (“*SBC Section 272 Audit Disclosure Order*,”).

³ *Verizon Section 272 Audit Disclosure Order*, ¶ 8.

⁴ *Verizon Section 272 Audit Disclosure Order* ¶¶16-19 and *SBC Section 272 Audit Disclosure Order* ¶ 8.

⁵ *SBC Section 272 Audit Disclosure Order* ¶ 8.

This falls squarely within the Commission's decisions in the Verizon and SBC Section 272 Audit proceedings, requiring the Auditor to make the entire Section 272 audit report public. The Commission so held because: (a) the plain language of Section 272(d)(2) "mandates public disclosure of the results of the audit, which are contained in the final audit report;"⁶ (b) the use of the agreed-upon procedures ("AUP") type of audit for these proceedings "necessarily requires" disclosure of the redacted facts to the public so that they could intelligently comment on the audit results;⁷ and (c) the Commission's rules governing the Section 272(d) biennial audit require that interested parties be able to "obtain this information without difficulty."⁸

In the *Verizon Section 272 Audit Disclosure Order*, the Commission found that Section 272(d)(2) superseded any potentially conflicting provision in the Communications Act or any other Act. The Commission held that disclosure was consistent with Section 220(f) of the Communications Act,⁹ both because the Section 272 audit "is conducted under the specific authority of section 272(d), not the general authority of section 220" and "the specific audit and disclosure provisions of section

⁶ *Verizon Section 272 Audit Disclosure Order*, ¶ 5. Section 272(d)(2) provides that the independent auditor "shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection" and that "[a]ny party may submit comments on the final audit report." 47 U.S.C. § 272(d)(2).

⁷ *Id.*, ¶ 6.

⁸ *Id.*, ¶ 7 (citing to Accounting Safeguards Under the Telecommunications Act of 1996, *Report and Order*, 11 FCC Rcd 17359 (1996) (*Accounting Safeguards Order*), ¶ 200, *Second Order on Reconsideration*, 15 FCC Rcd 1161 (2000)).

⁹ See, 47 U.S.C. § 220(f) which prevents disclosure of information gathered during audits pursuant to section 220 except as directed by the Commission or a court; see also, *Qwest Communications International, Inc. v. FCC*, 229 F.3d 1172, 1178-79 (C.A.D.C. 2000).

272(d) override the more general audit authority of section 220,”¹⁰ and because disclosure was in any event consistent with Section 220(f).¹¹

In the *Verizon Section 272 Audit Disclosure Order*, the Commission also found that disclosure of the redacted information is consistent with section 272(d)(3), which subjects only the underlying independent auditor’s workpapers to “confidential treatment in accordance with [the Commission’s] usual processes and procedures.”¹² In so finding, the Commission rejected Verizon’s claim that because the final report “would (as all audit reports do) contain information also found in the auditor’s workpapers” such information must automatically be exempted from disclosure, as a non-sensible construction of the section 272 audit requirements. Finally, the Commission held that its release of the redacted information was consistent with the Trade Secrets Act¹³ and Exemption 4 of the Freedom of Information Act (FOIA)¹⁴ on

¹⁰ *Id.*, ¶ 9.

¹¹ *Id.* at n.28, wherein the Commission noted that section 220 does not prevent disclosure of information gathered in audits; rather, it allows the Commission to disclose audit information pursuant to certain procedures. The Commission expressly stated that its holding in the *Verizon Section 272 Audit Disclosure Order*, was also consistent with the Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816 (1998) (*Confidential Treatment Order*), *order on reconsideration*, 14 FCC Rcd 20128 (1999). See, *Verizon Section 272 Audit Disclosure Order*, ¶¶ 8, n. 22 (aggregated data generally not protected), 11 at n. 33 (same) and 12 at n. 38.

¹² *Id.*, ¶ 10.

¹³ 18 U.S.C. § 1905, the Commission noting that the Trade Secrets Act makes it a misdemeanor for any agency employee to “make[e] known in any manner or to any extent not *authorized by law* any information coming to him in the course of his employment . . . concern[ing] or relat[ing] to trade secrets” and related confidential data. *Verizon Section 272 Audit Disclosure Order*, at n. 44.

¹⁴ 5 U.S.C. § 0.552(b)(4).

which section 0.459 is based “because section 272(d) expressly mandates public release.”¹⁵

Verizon seeks confidential treatment for performance data depicting its quality of service for certain telecommunications services. Yet, as in the Verizon and SBC Section 272 Audit proceedings, “the data at issue is summary information aggregated between the categories” here “272 Affiliate” and “Non-272 Affiliates” and “Non Affil. Carriers;” “the performance data is also aggregated at the state level;”¹⁶ and is of no utility to competitors but is of great significance in evaluating Verizon’s compliance with Section 272.¹⁷ It is accordingly clearly not entitled to confidential treatment.

In the earlier Verizon and SBC proceedings, AT&T also addressed why the “public inspection” requirement of Section 272(d)(2) would not be satisfied by the issuance of a Protective Order.¹⁸ Specifically, AT&T noted that such an Order might impose prohibitive costs on smaller CLECs and members of the public who might be required to travel to a specified location if the BOC denominated the information “Copy Prohibited,” thus effectively precluding the statutory requirement of a “public inspection” and contravening the Commission’s requirement that interested parties be able to “obtain

¹⁵ *Verizon Section 272 Audit Disclosure Order*, ¶ 14; *SBC Section 272 Audit Disclosure Order*, ¶¶ 10-11 and 13-14. As to the Trade Secrets Act, the Commission cited to *Qwest Communications, supra*, 229 F.3d at 328-31 (“The *Qwest Communications* court found that the [Communications] Act and the Commission’s regulations satisfied the “authorized by law” requirement.”). *Verizon Section 272 Audit Disclosure Order*, ¶ 14.

¹⁶ *SBC Section 272 Audit Disclosure Order*, ¶ 26.

¹⁷ *Verizon Section 272 Audit Disclosure Order*, ¶¶ 17; *SBC Section 272 Audit Disclosure Order*, ¶ 26.

¹⁸ Letter from Aryeh Friedman, Senior Attorney, AT&T, to Ms. Carol Matthey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, January 18, 2002, filed in CC Docket No. 96-150. AT&T incorporates that letter herein by reference.

this information without difficulty.”¹⁹ AT&T also noted that a Protective Order would be inappropriate because such an Order was likely to preclude the use of the proprietary information in other federal and state regulatory and judicial proceedings.

There is no justification for a different result here than in the earlier Verizon and SBC Section 272 Audit proceedings. For the foregoing reasons, AT&T respectfully requests that Auditor be compelled to file an unredacted version of the SBC § 272(d) Audit Report.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Aryeh Friedman", with a long horizontal flourish extending to the right.

Aryeh S. Friedman

cc: W. Davenport
M. Del Duca
S. Herauf
M. Savir

¹⁹ *Id.*, ¶ 7 (citing to Accounting Safeguards Under the Telecommunications Act of 1996, *Report and Order*, 11 FCC Rcd 17359 (1996) (*Accounting Safeguards Order*), ¶ 200, *Second Order on Reconsideration*, 15 FCC Rcd 1161 (2000)).